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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

96-262

In the Matter of	)	
	)	
Assessment of Presubscribed	)	CCB/CPD Docket No. 98-34
Interexchange Carrier Charges	)	
on Public Payphones	)	

REPLY COMMENTS OF CLEARTEL COMMUNICATIONS, INC.

Cleartel Communications, Inc. ("Cleartel"), by its undersigned counsel, respectfully submits its reply comments on the assessment of presubscribed interexchange carrier charges ("PICCs") on payphone lines in response to the Federal Communications Commission's ("Commission") May 4, 1998 Public Notice. Once again, Cleartel organizes its comments according to the specific questions set forth in the Public Notice.

I. Current Rules Do Not Permit Price Cap LECs to Assess PICCs on Payphone Lines; the Rules Cannot Be "Clarified," But Must Be Amended to Reach that Result

2. Does the Commission's existing rule governing collection of the PICC, 47 C.F.R. § 69.153, permit price cap LECs to impose PICC charges for LEC public payphone lines and, if not, whether the rule should be amended to provide explicitly for assessment of PICCs on public payphone lines?

A. Under Current Commission Rules, the PICC Does Not Apply to Payphone Lines; the BOCs' Analogy to the EUCL Rules is Inapposite

As Cleartel and others argued in their comments,[1] the Commission's rules do not currently permit price cap local exchange carriers ("LECs") to assess PICCs on payphone lines. The LECs attempt to argue by analogy that because the PICC is designed to recover common lines costs not

[1] *See, e.g.*, MCI Comments at 4 (Commission rules do not permit assessment of the PICC on public payphone lines because a LEC payphone service provider is not an end user under Commission rules).

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recovered by the end user common line ("EUCL") charge, the EUCL rules that explicitly permit assessment of the EUCL on payphone lines automatically apply to the PICC. The LECs' analogy is misplaced. When considered together, the absence of specific language permitting assessment of the PICC on payphone lines highlights the Commission's intention ***not*** to permit assessment of the PICC on payphone lines.

B. The Payphone Owner Is Clearly the Cost Causer and the One Most Likely to Benefit from the Line

Although evidence in the record shows that there are at least four entities that can derive some benefit from the existence of the payphone line – (1) the payphone owner; (2) the location provider; (3) the 1+ carrier; and (4) the 0+ carrier[2] – it is clear that the payphone owner is the primary beneficiary of the line. Parties submitting comments in this proceeding present starkly different evidence regarding the volume of 0+ versus 1+ calls that originate from payphones.[3] Parties also disagree as to whether more than one IXC can be presubscribed to a particular line.[4] Irrespective of the confusion surrounding these issues, it is clear that more than one IXC benefits

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[2] As noted below, customers can dial around to reach the operator service provider of their choice. This fifth category of beneficiaries is the list of operator service providers that may be accessed from any given payphone in any given month.

[3] For example, U S West claims that 70% of the traffic originating from its payphones is carried by the 0+ carrier. U S West Comments at 4. On the other hand, One Call presents evidence that based on a sample of randomly selected payphones where a subsidiary of One Call is both the 1+ and 0+ presubscribed carrier, 80% of the sampled payphones had more minutes of use attributable to 1+ traffic than 0+ traffic. One Call at 5 and Exhibit A.

[4] GTE and U S West state that a payphone may be presubscribed to both a 0+ and a 1+ carrier. GTE Comments at 7; U S West Comments at 4. Ameritech, Bell Atlantic and BellSouth disagree and claim that only one presubscribed carrier exists per line. Ameritech Comments at 1; Bell Atlantic Comments at 5; BellSouth Comments at 3.

from the existence of the payphone line.[5] Virtually all payphone lines benefit multiple IXCs in any given month because of the FCC's rules which permit and encourage callers to "dial-around" to reach the operator service provider of their own choosing. However, regardless of which or how many IXCs benefit from the existence of the payphone line, the payphone owner always derives a benefit from the line.

Section 276 of the Communications Act of 1934, as amended ("Act"), states that the FCC should:

> establish a per call compensation plan to ensure that all ***payphone [owners]*** are fairly ***compensated for each and every completed intrastate and interstate call*** using their payphone.

47 U.S.C. § 276(b)((1)(A)(emphasis added). On any given payphone line in any given month, there is no guarantee that the 0+ and/or 1+ carrier presubscribed to that line will complete even one call from that payphone. There is, however, a guarantee that if a long distance call is completed from the payphone, the payphone owner will receive compensation.[6] Congress has clearly chosen the payphone owner as the primary beneficiary of the payphone line. Thus, as the primary beneficiary and the cost causer, the payphone owner is the appropriate party to bear any PICC the Commission permits price cap LECs to assess on payphone lines.

The issue of discrimination between LEC-owned payphones and independent payphones also justifies assessing the PICC directly on the payphone owner. As the American Public

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[5] In sharp contrast, virtually all residential and business lines benefit only one IXC in any given month.

[6] *See Implementation of the Pay Telephone Reclassificaiton and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 20541 (1996).

Communications Council ("APCC") notes, to prevent toll fraud, most independent payphone providers have not PIC'd their payphones to a particular 1+ or 0+ provider. LECs have applied the Commission's no-PIC rule to assess the PICC for that line directly on the payphone owner.[7] Yet, since most LEC-owned payphones are presubscribed to a 0+ or 1+ carrier, the LECs' own payphone operations do not bear the burden of the PICC. As Sprint noted, "a fundamental purpose of Section 276 of the Act ... was to place LEC payphones on a equal footing with independently owned payphones for regulatory purposes."[8] The Commission cannot make an exception to this purpose with respect to access charges. The only rule consistent with competitive neutrality would be to assess the PICC on the payphone owner, LEC or independent, and require the LEC to impute the PICC to its own payphone operations.[9]

Ultimately, in the competitive marketplace, where presubscription to a particular payphone will generate sufficient revenue for the presubscribed carrier, the 0+ or 1+ carrier will likely establish a business relationship with the payphone owner in which the PICC is ultimately borne by the 0+ or 1+ carrier. However, in order to be consistent with principles of cost causation and to ensure competitive neutrality between independent payphone owners and LEC payphones, the Commission should assess the PICC on the payphone owner and let market forces structure the business

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[7] APCC Comments at 11-14.

[8] Sprint Comments at 3.

[9] MCI Comments at 9-10; One Call Comments at 4 (imposing PICC on LEC payphone unit would equalize treatment of public and private payphones); APCC Comments at 22 ("competitive parity between all PSPs is the hallmark of the Commission's deregulatory framework for payphones").

relationship between the payphone owner and the carriers that provide long distance and operator services to that payphone.

C. Any Change to Current Rules Would Require a Notice of Proposed Rulemaking

Where current rules clearly do not permit the assessment of a PICC on IXCs presubscribed to payphone lines, and where the Commission has received starkly conflicting evidence on industry practice regarding presubscription for payphone lines, a Notice of Proposed Rulemaking ("NPRM") is clearly required to effect any changes to the Commission's rules. The truncated comment period, and the specificity of the questions in the Public Notice, have exposed both confusion regarding current PICC rules and the failure to address, in any meaningful way, the potential impact of the Commission's PICC rules as applied to payphone lines.

Designating an IXC as the presubscribed carrier for a particular line was, historically, a business and record-keeping matter. As a business matter, the PIC permitted the IXC to establish a business relationship with a particular end user. As a record-keeping matter, the PIC permitted the LEC to assign, in the LEC switch, the end user's line to the IXC. However, since the *Access Charge Order*,[10] the consequences of being the presubscribed IXC for a particular line have changed dramatically.[11] As with any new regulatory scheme, some unforseen problems will arise during implementation. However, based on the limited record established in response to the Public Notice,

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10 *Access Charge Reform*, CC Docket No, 96-262, First Report and Order, FCC 97-158 (released May 16, 1997).

11 *See, e.g., Sprint Corporation Request for Declaratory Ruling Regarding Application of PICCs*, CCB/CPD 98-2, Memorandum Opinion and Order, DA 98-906, ¶ 7 (rel. May 19, 1998) ("Retention of discontinued PIC designations in the LEC switch had no practical consequences before the advent of the PICC") (citations omitted).

it is clear that the Commission did not consider, and current rules do not address, the application of the PICC to the (or multiple) IXCs presubscribed to payphone lines, lines that are fundamentally different from both business and residential end user lines. The Commission should therefore issue a NPRM to consider and resolve these issues.

II. Any Determination Regarding Which PICC Applies to Payphone Lines Also Requires a Notice of Proposed Rulemaking

4. Should all public payphones be charged the multiline business PICC, or should some public payphones, such as those that constitute the only telephone line at a given location, be charged the single-line business PICC?

Again, any determination regarding this issue is well outside the scope of a "clarification." Given the lack of specificity in current rules, the limited nature of the questions posed in the Public Notice, and the conflicting evidence submitted to date, it is clear that any determination on this issue would benefit from a further investigation of the facts.

CONCLUSION

The Commission should clarify that under current rules, price cap LECs are not permitted to assess PICCs on payphone lines. Furthermore, the Commission should issue a NPRM to amend its rules to permit assessment of PICCs on payphone owners.

Respectfully submitted,

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June 2, 1998

CERTIFICATE OF SERVICE

I, Wendy Mills, do hereby certify that the foregoing Reply Comments of Cleartel Communications, Inc., were served on the following this 2nd day of June, 1998, via hand delivery (*) or first-class U.S. mail, postage prepaid:

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